

These are the tentative rulings for civil law and motion matters set for Thursday, July 16, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 15, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. CU14-080750 Glisson, Michael vs. Superior Court of California, Nevada Co

The demurrer to the second amended complaint is continued, on the court's own motion, to July 21, 2015 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

2. S-CV-0029600 Enviro-Building Systems, Inc., et al vs. Galvacore, Inc.

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Preliminary Matter Regarding Proposed Judgment

The court notes plaintiffs filed objections to the proposed judgment and a request for hearing on July 6, 2015. California Rules of Court, Rule 3.1590(k) states, "[t]he court may order a hearing on proposals or objections to a proposed statement of decision or the proposed judgment." It is the court, not the parties, that sets a hearing. The court shall review the proposed judgment in light of plaintiffs' objections. However, the court shall not set a hearing at this time.

Defendants' Motion for Attorney's Fees

The motion is denied. There are procedural and substantive deficiencies in defendants' current request. First, the noticed motion does not sufficiently identify the statutory basis for the request, merely referring to "California and Nevada law" as the

supporting legal authority. Second, the substantive analysis of the motion is not sufficiently developed or supported to warrant an award of attorney's fees. Defendants rely upon Code of Civil Procedure section 128.5 as the basis for its \$428,890.00 attorney's fees request. Section 128.5 was amended, effective January 1, 2015, to remove the prior exclusionary language that essentially superseded the statute. Yet, defendants provide no discussion or analysis as to how this section applies to a post-trial award for attorney's fees. Finally, defendants fail to sufficiently establish the bad-faith and/or frivolous tactics that would support the entirety of the \$428,890.00 request. The reference to the court's decision is simply insufficient for the court to make such a determination. For these reasons, the court declines to grant the request.

Defendants' Motion for Prejudgment Interest

The motion is denied. There are both procedural and substantive deficiencies in defendants' current request. First, the noticed motion does not state prejudgment interest under Civil Code section 3288 is sought while the request is made in the substance of the motion. Second, defendants have not made a sufficient showing to warrant such an award. A request for prejudgment interest based upon liquidated damages is governed by Civil Code section 3287(a), which states in pertinent part: "Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, ...". "The statute does not authorize prejudgment interest where the amount of damage, as opposed to the determination of liability, 'depends upon a judicial determination based upon conflicting evidence and is not ascertainable from truthful data supplied by the claimant to his debtor.' [Citations omitted.]" (*Fireman's Fund Ins. Co. v. Allstate Ins. Co. (1991) 234 Cal.App.3d 1154, 1173.*) The certainty requirement for Civil Code section 3287(a) generally falls under one of two tests: (1) whether the debtor knows the amount owed or (2) whether the debtor would be able to compute the damages. (*Ibid.*) Defendants have not made a sufficient showing that the damages were certain to support an award of prejudgment interest.

Civil Code section 3288 states "[i]n an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury." Defendants' general referral to the court's decision in this case is an incomplete method to establish a basis for prejudgment interest under this section. Thus, the request for prejudgment interest is denied.

3. S-CV-0031676 Trivedi, Amit, et al. vs. Burmeister, James, et al.

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, the hearing shall be heard at 8:30 a.m. in Department 42:

Plaintiffs' Motion For New Trial

Plaintiffs Amit Trivedi and Trivetti Associates, Inc. move for new trial, alleging that the award of damages was inadequate (*Code of Civil Procedure section 657(5).*) and

that there was insufficient evidence to support the jury's verdict, or that the verdict was against law (*Code of Civil Procedure section 657(6).*).

Plaintiffs' principal argument is that the jury failed to award adequate damages on plaintiffs' quantum meruit claim. Plaintiffs reiterate arguments made at trial that various services and money provided by plaintiffs to defendants "total at least \$989,000 and far exceed the \$525,000 already paid to plaintiffs by defendants." (Declaration of O'Connor 4:6-7.) Plaintiffs' motion, just like their arguments at trial, asserts that "the overwhelming and uncontroverted evidence presented by plaintiffs at trial showed defendants were unjustly enriched in the amount of \$1.3 to \$1.4 million." (Defendants' Memorandum 4:6-8.)

"A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury *clearly should have reached a different verdict or decision.*" (*Code of Civil Procedure section 657; emphasis added.*) In ruling on a motion for new trial based on insufficiency of the evidence, as claimed by plaintiffs here, the trial court reweighs the evidence. The judge may review conflicting evidence, determine its sufficiency, draw reasonable inferences from the evidence, and consider the credibility of witnesses. (*Casella v. SouthWest Dealer Servs., Inc.* (2007) 157 Cal.App.4th 1127, 1159; *Fountain Valley Chateau Blanc Homeowner's Ass'n v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 751.) In considering a motion for new trial based on a claim of inadequate damages, the court likewise has the responsibility to weigh the evidence on damages. In order to grant a motion on this ground, the trial court, after independently assessing the evidence, must conclude that the trier of fact clearly should have reached a different result. (*Fortman v. Hemco* (1989) 211 Cal.App.3d 241.)

Before considering the evidence adduced at trial, the court first takes note of the procedural context in which the motion is made. Plaintiffs' notice of intention to move for new trial indicates the motion for new trial is being made by both plaintiffs, Amit Trivedi and Trivetti Associates, Inc. In unanimously denying plaintiffs' claim of breach of contract, the jury found plaintiffs had not proved the parties agreed to the terms of a partnership agreement. The jury also found defendants did not make a promise of partnership to either plaintiff, thus denying plaintiffs' cause of action for false promise. Similarly, in rejecting plaintiffs' claim of breach of fiduciary duty, the jury concluded plaintiffs did not prove that the parties entered into a contract for partnership or joint venture with terms clear enough for the parties to understand. As to the remaining cause of action for quantum meruit, the jury determined that defendant Power Systems Professionals, Inc. (and not defendant James Burmeister) requested services which were performed by Amit Trivedi (and not by plaintiff Trivetti Associates, Inc.). However, the jury determined – unanimously – that Power Systems Professionals, Inc. did not fail to pay for the services rendered by Amit Trivedi.

By this motion for new trial, plaintiffs apparently do not contest the jury's determinations as to any cause of action except for quantum meruit. To the extent the motion is intended to encompass the other causes of action, the court finds there was more than sufficient evidence to support the jury's determinations. Plaintiffs simply failed to clearly establish the existence or promise of a partnership or joint venture, whom the parties were to the alleged agreement or venture, and what the terms of the agreement were.

The court has reviewed the evidence related to plaintiffs' quantum meruit claim. Preliminarily, the court agrees with the jury's determination that the evidence did not establish defendant Burmeister, individually, requested services that were performed by Trivedi. The evidence established, at most, that Trivedi performed services for Power Systems Professionals, Inc. Evidence showed that Trivedi received payment for work on the Siemens project according to invoice. The rest is cloudy inasmuch as Trivedi did not prove the balance of any uncompensated hours or services he allegedly worked for Power Systems Professionals, Inc. for which he had not already been paid or which was offset by other consideration. Trivedi's claim that he should be compensated for software provided to defendant was simply not proved. As defendants point out in their opposition to this motion, the court is not presented with a situation where the jury simply awarded an inadequate amount of damages – the court is presented with the situation where the jury correctly found no underlying legal responsibility for damages.

Finally, plaintiffs overlook that their motion is predicated on the court accepting Trivedi's testimony as credible with respect to the amount of services rendered, the value of such services, and that he was not otherwise compensated. However, the court's assessment of the parties' respective testimony is that neither party was entirely credible on these material points. Here, in light of the evidence, the jury got it right – plaintiffs did not meet their burden of proof. Pursuant to the standard of Code of Civil Procedure section 657, the court cannot say from its independent assessment of the evidence that the jury clearly should have reached a different verdict or decision.

The motion is denied.

4. S-CV-0033922 Kruzic, Shannon vs. Ocwen Loan Servicing, LLC, et al

Defendants' Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted.

Ruling on Motion

The motion is granted. The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and

the moving party is entitled to a judgment as a matter of law.” (CCP§437c(c).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (CCP§437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) Defendants have met their initial burden by presenting evidence establishing plaintiff obtained a \$512,000 mortgage on her property located at 5300 Blossom Court in Rocklin. (Defendants’ SSUMF Nos. 1-3.) The deed of trust appointed MERS as the beneficiary of the lender, which was subsequently assigned to DB Trust. (Id. at No. 4-6.) Plaintiff defaulted on the loan by failing to make payments and a notice of default was recorded on July 31, 2012. (Id. at Nos. 5, 9.) Plaintiff was in arrears on the mortgage in the amount of \$32,299.18 as of July 31, 2012. (Id. at No. 10.) She did not cure the default. (Id. at No. 11.) The notice of default accelerated the loan and made the balance immediately due and payable. (Id. at No. 12.) A notice of trustee’s sale was recorded on November 15, 2012 and no other foreclosure documents have been recorded since that time. (Id. at Nos. 13-14.) The sale was set for January 23, 2013. (Id. at No. 15.) Defendants repeatedly postponed the foreclosure sale to evaluate plaintiff’s alternatives. (Id. at No. 16.) Plaintiff was given a single point of contact while she applied for loan modification. (Id. at Nos. 17-19.) She was given a trial period plan requiring 3 monthly payment to further qualify for a modification. (Id. at No. 20.) Plaintiff did not submit a payment during this trial period and plaintiff was later informed that she did not qualify. (Id. at Nos. 21-22.) Nor has plaintiff tendered the outstanding amount owed on the mortgage. (Id. at No. 23.) Plaintiff has failed to present any evidence to rebut these facts so that they remain undisputed. Since plaintiff has failed to present evidence to create a triable issue of material fact, the motion is granted.

5. S-CV-0034586 Epic HR, Inc. vs. Alves, Steven G.

Cross-Defendant Herbert Feinberg’s Motion for Trial Preference

The motion is denied without prejudice. The court must grant a petition for trial preference from a person over the age of 70 where the moving party establishes (1) a substantial interest in the action as a whole and (2) the health of the moving party is such that preference is necessary to prevent prejudice. (*Civil Code section 36(a).*) The moving cross-defendant has sufficiently shown a substantial interest in the action. However, he has not sufficiently established his health is such that preference is necessary to avoid prejudice. The court declines to grant the request until such time as the moving cross-defendant is able to submit sufficient evidence to support the request.

Cross-Complainant Steven Alves’ Ten Discovery Motions and Appointment of Discovery Referee

The court continued Mr. Alves discovery motions to the current date and informed all of the parties of the possible appointment of a discovery referee. While all

parties were afforded an opportunity to submit additional briefing on the issue, only the cross-defendants provided the court with supplemental briefing. Upon careful consideration, the court appoints the Honorable Cecily Bond (Retired) as discovery referee in this matter pursuant to CCP§639(a)(5). Specifically, the court finds the sheer volume of the pending discovery motions, where the moving papers span more than eight volumes of the court file, creates an exceptional circumstance warranting the current appointment. The court further finds that the level of discovery disputes in this single case exceeds the judicial resources available to the court as it is unable to devote half of a civil law and motion calendar to the disputes in a single action. The Honorable Cecily Bond shall be appointed for all discovery purposes in this action at her current reasonable hourly rate with each party paying a pro rata share of her fees. The 10 discovery motions currently pending before the court shall be forwarded to her for further determination.

6. S-CV-0035970 Krohn, Liz vs. Gibbons, Phillip E.

The demurrer and motion to strike are dropped from the calendar. A first amended complaint was filed on July 7, 2015.

7. S-CV-0036254 Johnson, Wayne L., Jr. vs. Krausse, Jennie

The motion to change venue is dropped from the calendar. A dismissal of the complaint was entered on June 22, 2015.

8. S-PR-0006606 Mick, Marguerite - In Re the Estate of

The motion to enforce settlement agreement is continued, on the court's own motion, to August 6, 2015 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

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